

**To:** Hisel-McCoy, Sara[Hisel-McCoy.Sara@epa.gov]; Buffo, Corey[Buffo.Corey@epa.gov]  
**Cc:** Nalven, Heidi[Nalven.Heidi@epa.gov]; Schroer, Lee[schroer.lee@epa.gov]; Southerland, Elizabeth[Southerland.Elizabeth@epa.gov]; Christensen, Christina[Christensen.Christina@epa.gov]  
**From:** Fleisig, Erica  
**Sent:** Mon 3/13/2017 5:07:29 PM  
**Subject:** RE: FL HH Petition Litigation - issue needs resolution Monday  
FL and WA Petition Issue Paper 3 13 17 1pm.docx

Here's the issue paper that we prepared for Mike to share with David Schnare, pending Sara and Betsy S' review (this incorporates edits from R4, R10 and Corey).

-Erica

---

**From:** Hisel-McCoy, Sara  
**Sent:** Monday, March 13, 2017 9:47 AM  
**To:** Buffo, Corey <Buffo.Corey@epa.gov>  
**Cc:** Nalven, Heidi <Nalven.Heidi@epa.gov>; Fleisig, Erica <Fleisig.Erica@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>  
**Subject:** Re: FL HH Petition Litigation - issue needs resolution Monday

Corey,

Betsy will raise to Mike at today's ow IO meeting.

Thanks,  
Sara

Standards and Health Protection Division  
On Mar 13, 2017, at 9:40 AM, Buffo, Corey <Buffo.Corey@epa.gov> wrote:

Thanks. The program cannot yet commit to the first part in yellow or represent that we are well positioned to meet the response deadline given the vagaries of the current elevation process. Mike was clear that we needed someone from the beachhead team to bless any commitment to respond by a date certain. Maybe Kevin would suffice. Just let us know when you are elevating so we can keep Mike in the loop.

---

**From:** Nalven, Heidi  
**Sent:** Monday, March 13, 2017 9:26 AM  
**To:** Buffo, Corey <Buffo.Corey@epa.gov>  
**Cc:** Fleisig, Erica <Fleisig.Erica@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>  
**Subject:** FW: FL HH Petition Litigation - issue needs resolution Monday

Hi Corey – Please see note below. I just spoke with Erica about this and she is going to flag this issue at your 10:00 meeting. We hope to hear something back from Kevin this morning.

---

**From:** Nalven, Heidi  
**Sent:** Friday, March 10, 2017 5:13 PM  
**To:** OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>  
**Cc:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Lee Schroer <schroer.lee@epa.gov>  
**Subject:** FL HH Petition Litigation - issue needs resolution Monday

Hi Kevin –

We wanted to flag an issue that needs resolution by Monday involving an unreasonable delay lawsuit filed by Florida Clean Water Network regarding its 2009 petition for water quality standards for the State of Florida. The issue

## Ex. 5 - Deliberative Process / ACP

## Ex. 5 - Deliberative Process / ACP

## Ex. 5 - Deliberative Process / ACP

DOJ, WLO, and ORC think it's advisable to

Ex. 5 - Deliberative Process / ACP

## Ex. 5 - Deliberative Process / ACP

Thanks,  
Heidi

+++++

**B. Defendant's position:** Defendant expects to take action on, i.e., grant or deny, Plaintiff's administrative rulemaking petition within 60 days from the date of the filing of this Joint Conference Report—action that would indisputably moot Plaintiff's claim. If Defendant acts within that timeframe, Plaintiff should dismiss this case. If after having met and conferred with Defendant Plaintiff does not agree to dismiss the case, the Parties should file a supplement to this Joint Conference Report within 30 days of Defendant's action. In that supplement, the Parties should address how to govern further proceedings in this case. With the exception of moving to amend a pleading (all Parties agree to a deadline of May 1, 2017, as noted above in part V), all further proceedings in this case should be held in abeyance pending: (1) Plaintiff's dismissal following an EPA action as described above in this paragraph; (2) further Order of the Court following its consideration of the Parties' supplement to this Joint Conference Report as described above in this paragraph; or (3) Defendant's filing of a motion for summary judgment as described in the following

paragraph.

If Defendant does not act within that timeframe, Defendant should file a comprehensive motion for summary judgment—i.e., a motion that: (1) addresses Defendant’s liability and any appropriate remedy to be awarded under the APA; and (2) attaches pertinent portions of the record before EPA in accordance with the APA, *see* 5 U.S.C. § 706 (“[T]he court shall review the whole record or those portions of it cited by a party[.]”)—within 90 days from the date of this Joint Conference Report. Plaintiff should then file a combined opposition and cross-motion for summary judgment within 45 days of Defendant’s motion. If, however, upon reviewing Defendant’s dispositive motion Plaintiff contends that it is entitled to specific discovery, Plaintiff may, after meeting and conferring with Defendant, file a discovery motion within 20 days of Defendant’s motion. Defendant may oppose Plaintiff’s discovery motion. If Plaintiff files a discovery motion, Plaintiff’s deadline to file a combined opposition and cross-motion for summary judgment should be held in abeyance pending the Court’s resolution of the discovery motion.

**Heidi Nalven**

U.S. EPA Office of General Counsel  
202-564-3189

**Heidi Nalven**

U.S. EPA Office of General Counsel  
202-564-3189